

**KITTY HAWK PLANNING BOARD  
MINUTES  
Regular Meeting, October 17, 2013 – 6:00 p.m.  
Kitty Hawk Municipal Building**

**AGENDA**

1. Call to Order / Attendance
2. Approval of Agenda
3. Approval of Minutes:
  - a. September 12, 2013 - Regular Meeting
4. Administrative Report:
  - a. Town Council Action from October 7, 2013 Meeting
5. Text Amendment:
  - a. Numerous Sections, *Call Centers*
6. Zoning Amendment (Preliminary Discussion):
  - a. Shoreside Center Outparcels, 5336 – 5440 N. Croatan Highway
7. Comments:
  - a. Chairman Northen
  - b. Planning Board Members
  - c. Town Attorney
  - d. Planning Director
8. Public Comment
9. Adjourn

**1. CALL TO ORDER / ATTENDANCE**

Chairman Northen called the meeting to order at approximately 6:00 p.m., followed with roll call by Planner Heard.

**PLANNING BOARD MEMBERS PRESENT:** Oscar Northen, Chairman / Craig Garriss, Vice Chair  
Richard Fagan / Lynn McClean / Jeff Pruitt / Chuck Heath, Alternate / John Richeson, Alternate

**STAFF PRESENT:** Joe Heard, Director of Planning & Inspections / Steve Michael, Town Attorney

**2. APPROVAL OF AGENDA**

Hearing no changes or additions, **the Chair declared the agenda approved as presented.**

**3. APPROVAL OF MINUTES:**

**a. September 12, 2013 - Regular Meeting.** With hearing no changes or corrections to the minutes, **Chairman Northen declared the minutes approved as submitted.**

#### 4. ADMINISTRATIVE REPORT:

**a. Town Council Action from October 7, 2013 Meeting.** The Planner noted that several members of the Planning Board attended the October 7, 2013 Council meeting. As a brief summary of action taken by Council at its last meeting, Planner Heard brought forward a couple of planning items of interest:

- At the start of the meeting, Council heard a presentation from Stephen Lambert, Planning Director with the Albemarle Regional Planning Agency, which has been working on putting together a regional bicycle plan. Funding has been provided through a grant from NCDOT. A copy is available for review, filed with the Planner's office. The purpose of the bicycle plan is to establish and tie together regional bicycle facilities and improvements.

Mention was also made by the Planner regarding the Dare County Transportation Plan, which details specific projects that will seek future NCDOT funding.

- The Planner indicated that every two years the staff does an implementation status report on the Town of Kitty Hawk's CAMA Land Use Plan, which outlines to the Coastal Resource Commission what the community has accomplished toward furthering its goals. Planner Heard recognized he may be making a presentation on behalf of Kitty Hawk at a future CRC meeting.
- Council reviewed the text amendment regarding appeals and variance rules for the Town of Kitty Hawk's Board of Adjustment, voting unanimously to approve the changes which bring the Town into compliance with NC State law.

It was announced that David Owens, with the UNC Institute of Government, will be coming to the Outer Banks in early November to provide training to local boards of adjustment to go over the new regulations. A "thanks" was given to the Town of Kill Devil Hills for hosting the event. It was noted that after attending the upcoming training session, Town staff and board members may even determine the need to tweak the recently adopted amendments.

- Council granted unanimous approval to the Hickory Ridge Subdivision, Phase III.

#### 5. TEXT AMENDMENT:

**a. Numerous Sections, Call Centers.** This text amendment establishes conditional use standards for large call centers in the Kitty Hawk Town Code, in Sections 42-250, 42-251, 42-252, 42-277 and 42-278. The Planner recalled that the Board discussed this matter at its last meeting. One of two primary issues centered on how to define a large call center, and a consensus was determined. However, regarding parking standards, a concern remained unresolved.

Planner Heard summarized his staff memorandum dated October 17, 2013, regarding this text amendment proposal. Said memo is entered into the record:

##### Proposal

*The proposed amendments include a definition for a large call center and the establishment of standards to permit large call centers as a conditional use in the BC-1, BC-2, BC-3, VC-2, and VC-3 zoning districts.*

##### Background

*A call center is a centralized service center used for the purpose of receiving or transmitting a large volume of requests by telephone or email. An inbound call center offers customer service/support and inquiries from consumers. An outbound call center is operated for telemarketing, solicitation of charitable or political donations, debt collection, and market research. A call center typically contains an extensive open workspace for call center agents, with work stations that include a computer for each agent, a telephone headset connected to a telecom switch, and one or more supervisor stations.*

It can be independently operated or networked with call centers in other locations. Some photographs and typical call center layouts are attached to give you a better idea of how these businesses operate.

Recently, the Planning & Inspections Department (with input from the Town Council and Town Manager) made an interpretation to define a small (9-15 employees) call center as an office use and permit the establishment of a call center in one of the units in the Quail Run Business Center at 500 Sand Dune Drive. During consideration of this proposal, staff noted that while a small call center operation may have less of an impact than typical offices uses, a larger scale call center could potentially have a significant impact on the surrounding area. Staff offered to propose an ordinance that sets standards for larger call centers, should this type of use be considered in the future.

The main zoning concern surrounding large call centers is the amount of parking needed for employee parking. Although call centers generally do not have any walk-in customers requiring parking, these types of businesses typically have a much greater need for employee parking as they use space more efficiently than a typical office use. A common layout would have employees arranged in rows of cubicles (5' x 10' space per employee).

#### **Discussion at 9/12 Planning Board Meeting**

During the initial discussion of this text amendment proposal, Planning Board comments centered around two issues:

1. Developing a minimum parking requirement for large call centers. Noting that call centers typically squeeze more employees into a space than typical office uses, the Board members seemed to concur that a greater parking standard was needed for call centers. Staff was asked to review ordinances from other communities and provide examples of parking standards for call centers.
2. Defining a "large call center". A majority of the Board members seemed to support a definition that any call center over 15 employees would be a large call center. A call center with 15 or fewer employees would be classified as an office use.

#### **Parking Standards from Other Communities**

Although other communities in North Carolina have permitted large call centers, staff was not able to find a single example of parking requirements specifically for call centers. So, all of the examples are from other communities elsewhere in the country. These examples are intended to give the Board members a range of requirements and ideas on how to apply parking standards for this type of use. It appears that most communities use 1 parking space per 300 square feet (the typical requirement for offices). However, the communities in these examples have more thoroughly analyzed the operation of call centers and developed parking standards specifically for them.

<u>Community Name</u>	<u>Minimum Parking Requirement</u>
Columbus, IN	1 space per 200 square feet
Las Cruces, NM	1 space per 125 square feet
Mesa, AZ	1 space per 150 square feet
Payson City, UT	1 parking space per employee at greatest shift
Tempe, AZ	1 space per 150 square feet
Delray Beach, FL	2 spaces per 1,000 s.f., plus 1 space per work station
Other Requirements	1 space per 165 square feet
Mentioned on a	1 space per 100 square feet
Discussion Board	1 space per 125 square feet
	1 space per 250 square feet

#### **Alternatives**

There are a number of ideas and options for the Planning Board to consider when developing standards for call centers. Here are a couple of ideas to simplify the amendment.

1. Rather than creating a separate "large call center" category, just treat all sizes of call centers equally.
2. As the only issue with call centers seems to be parking, it may not be necessary to make them conditional uses. They can be added as uses of right in the BC-1, BC-2, BC-3, VC-2, and VC-3 zoning districts. Adding a minimum parking standard for call centers will take care of the parking issue.

**Consistency w/ Land Use Plan**

The Town's adopted CAMA Land Use Plan does not contain recommendations regarding specific types of commercial uses, such as call centers. So, it does not directly address this type of issue.

As part of its recommendation, the Planning Board is asked to make a determination whether the proposed text amendment is or is not consistent with the adopted CAMA Land Use Plan.

**Planning Board Action**

The Planning Board is asked to provide the Town Council with a recommendation regarding the text amendment proposal.

**Recommended Motion**

Action by the Planning Board may include approval of the proposed amendment as outlined, approval with modifications, or tabling of the proposed text amendment for further consideration. Adoption of the ordinance is not particularly time sensitive.

Should the Board decide to recommend approval of the proposed text amendment, the motion could be worded in the following manner:

**"I move to amend the Kitty Hawk Town Code by the establishment of standards for call centers. The Planning Board finds this amendment to be consistent with the Town's adopted CAMA Land Use Plan."**

Included in the staff report were photographs which depicted general examples of call center layouts and typical cubicle setups. The photos helped to show how the use would be set up inside of a building.

The Chairman offered his thoughts, saying he has had experience in other jurisdictions, and using what he sees as the most logical option, and with knowing the Kitty Hawk community and how persons drive their cars to go anywhere, he cited support for Delray Beach, FL's parking standard. Said standard may be a little excessive, the Chair remarked, suggesting maybe a standard of two spaces per 500 sq. ft. plus one space per work station.

VC Garriss indicated he concurs with Chairman Northern, agreeing the example of Delray Beach using two spaces per 1,000 sq. ft. may be too much.

Fagan directed attention to the proposed text amendment itself, wondering if the Board should first establish if there needs to be simply just conditional use standards – to establish standards for call centers and have no distinction as to whether they are large or small (reference was made to the staff memorandum's first listed alternative).

In response to a question by Pruitt as to what has already been approved, Planner Heard indicated what has been approved is a "small call center," proposed to be no more than 15 employees. What was asked of the Council to consider is whether they would consider such to be consistent with an office use, which is permitted in the subject. In short, the use has not been defined as a call center but as an office use, even though it is a call center.

Upon Pruitt posing if a proposed use were to be defined as a call center instead of as an office use, using the standard defining a call center as something with more than 15 employees, Planner Heard explained the interpretation was made by staff with input from the Council, but it's nothing more than an interpretation. The interpretation is not a law or a regulation just because we made that decision. We do try to be consistent with that interpretation, but if the Town chooses to adopt a different standard that's in the ordinance, everything will default to the adopted standard.

Pruitt: "From now on?"

Heard: "Should the Town adopt the ordinance."

Pruitt: "... if they have 8 employees, if we choose one per employee, they'll have 8 parking spaces and we won't be going by the office standards, if it's lower than 15 employees, correct?"

Heard: "That's correct, and just to be clear for the Board, just in case you have this in the back of your mind – the one that's already been approved, parking will not be an issue for that particular use. If you recall when we were reviewing the Beach Ready Auto project, that is one of the few sites in Kitty Hawk that actually has a great amount of parking, more than what they need."

Pruitt stated he is more in favor of recommending at least one parking space per employee, although he is open to also requiring parking based on square footage if deemed necessary. He added each cubicle needs to have its own parking space.

Chairman Northen outlined that one parking space per cubicle takes care of each employee, and requiring additional parking spaces based on square footage would allow for parking for others, such as managers or other general office personnel. Pruitt supported the Chair's analogy.

McClean offered a variable of a use operating under three 8-hour shifts and having 300 employees – 100 work stations being shared by three people. In response, the Chairman said, "I don't think we can negotiate that. I don't know that we can control that. That's going to be ...."

McClean: "... then you're also going to have to consider the crossover time between shifts when Mary hasn't left yet and Susie comes in and parks her car somewhere. So, that adds something entirely else to it."

Chair: "But, do you want to have 100 spaces ... or 200 spaces for a 100-space station? That's what you get into."

McClean: "That's the question I don't have an answer to right now. That's a variable we need to throw in there and consider because if you're looking at it from a sheer business standpoint, somebody who makes an investment in furniture and infrastructure for a business like this, wants to maximize his return on his investment ... just looking at it that way, and a lot of the call centers are ... when you call Charter Communications, when you have an issue or when you call the satellite people, there's somebody there 24/7 answering that phone. It's hard to find four cars running around after 10 p.m. sometimes, but, you know, if there is a market out there for people who actually want to work a night shift ...."

Chairman: "... well, to be the devil's advocate for just a minute ... I understand what you're saying, clearly, but let's say, for instance, a call center would have a full staff, and let's use the 100 you used a minute ago ... that'll work for me, whatever ... but, during the midnight hours, they would have 20. To me, that would be a logical way to use employees."

McClean: "If it's a national call center, we can't forget the West Coast is just getting up when we're already eating lunch."

Richeson said he supports what the Chair is saying, posing a question regarding the proposed text amendment addressing handicapped parking requirements. Planner Heard recalled Richeson making a good point during the Board's last meeting, when it was noted this type of



business lends itself to hiring and accommodating persons with physical handicaps. Although there is no specific data which shows such, it is something to be mindful of when developing parking standards, perhaps having a greater number of ADA accessible spaces as opposed to a typical use. Chairman Northern cited many site plans have more handicap spaces than what is actually needed, that the number of ADA spaces present is because of what laws require. However, common with the subject use, more handicap persons are employed, but it is difficult for the Town to know how to set a parking standard.

Richeson also offered that the Delray Beach parking standard using additional parking based upon square footage would also allow for persons such as cleaning crews and support personnel.

Heath commented the size of cubicles could determine how many employees can be squeezed into an area, noting it could be necessary to calculate parking spaces needed on the total number of employees versus cubicles.

Concurring with Heath's point, Pruitt stated he would prefer to see a parking standard based on the number of employees and not work stations. With that thought in mind, Fagan directed the Board's attention to Payson City's standard of using the greatest shift, which would include as many employees as would be there for the entire day.

McClellan stated that if the Board were to recommend one parking space per employee at the greatest shift, she would suggest also bringing into consideration a small number of spaces for the visiting owner who does not normally work there, a technician who comes to fix the copier, or the perspective employee having an interview. The Chair said such would be accomplished if parking were to require one space per employee plus so many parking spaces per square footage.

Pruitt offered four or five extra spaces should be plenty when calculating against square footage, particularly if for a large building, and Chairman Northern expressed a concern with operations involving 15 employees in a 1,000 sq. ft. structure.

Attorney Michael asked to contribute something for the Board to think on:

*"You're using some terms here, and the term 'employee' ... you're assuming somebody is actually employed by the outfit and works fulltime. What about part-time employees? What are you going to do with independent contractors?"*

Chairman: *"... those that report to that building every day."*

Attorney: *"They don't have to be an employee to do that. They can be independent contractors. Lots of call centers are going to have people there who are independent contractors. Every real estate agent in Dare County, pretty much, is an independent contractor."*

Chairman: *"Is there any way to legally cover that by saying, 'one parking space for every person there in the building normally every day.'?"*

Attorney: *"Again, that's sort of vague and the problem you run into is when you set the call center up and a guy's going to say, 'I'm going to have 10 employees,' and three months later, you go in there and they have 50 people in the building, and he says, 'well, only 10 of them are employees and 40 of them are independent contractors.'"*

*"It's a monitoring and compliance problem. You don't want Joe to have to go by and*

count heads every week ...."

Heard: "... and I will say, just from the staff's standpoint, and Steve has hit right on it, right there, just purely looking at this from an enforcement standpoint, the work station is going to be easier. I can walk into a business and tell you exactly how many work stations they have at any time, but employees ... unless I happen to come in ... it's hard to tell whether or not they're pushing over that limit or not and that kind of thing, so that adds a little to that discussion, although I would, certainly, be glad to consider either way, if there is a way we can define it with the ...."

Chairman: "... but, in reality, Joe, if a guy comes into your office with a set of plans and says, 'this is what I want to build, what I want a permit for, and I'm going to have 20 call stations for phones, and I will have these two offices for supervisors, and I'm going to have this lounge for employees, and I'm going to have this as a secretary station or for these two CEOs ...,' couldn't you get at least a feel for how many employees that building would support?"

Heard: "Absolutely, but then you have this question that Mr. Michael has brought up ...."

Chairman: "... that was my thinking when I put it out there."

Pruitt: "So, back to the ... would we be better off to stay with one space per work station, and if we don't think that might be enough, we could change the ratio?"

Attorney Michael: "I thought when you were talking about one per work station and so many based on square footage, you were at a formula that was easy to calculate, you had a plan that showed how many work stations you were going to have instead of trying to count heads or how many people are actually there, and then you get into the issue of how do you classify these people. It could become an enforcement problem ...."

Pruitt: "... and we don't want that ...."

Chairman: "... another way to do that, Joe, is standards that are used, this 150 sq. ft. per person, and it's based on an office that's roughly 12' x 12', so if we say one parking place per station plus two for every 300 sq. ft. of building, we would cover all that, would we not?"

Pruitt: "Yes, I think we would, but is that going to be too much parking?"

Chairman: "Often times, I don't know how Kitty Hawk does it, but there are jurisdictions that will take out ... treat circulation space with an office building plus a storage warehouse base as compared to office space, all in one center."

Pruitt asked a clarifying question about a number cited earlier by Chairman Northen, which was reiterated as one parking space per station, plus two spaces for every 300 sq. ft. of building, with the Chair adding, "and if you count that in the square footage, you get more parking than what you need, and maybe that is why they went to 1,000 sq. ft."

Fagan said Pruitt and the Attorney have brought up key points, being the work station, and regarding the definition of "employee," it could generally include all classifications. In response, Attorney Michael further explained, "the problem is that's a floating number that changes, and you have to approve something that is definite."

McClean inquired about a definition for "work station." Attorney Michael indicated staff has yet to define such and it may be easier to define a work station than an employee.

Fagan referenced the photographs, saying they depict creative innovation, and the Attorney commented work stations are small and many can be squeezed into small areas. Planner Heard indicated he has tried to provide background information, noting, "these types of uses notoriously come and go and they very, very rarely build their own buildings because they might only be active for while they have a certain account, so they can grow quickly and shrink quickly. That's one of the benefits to the owners of this type of business – is that it is very easy to rise with the economy and accounts that you have, so it can grow very quickly if the opportunity arises."

Attorney: "As far as parking is required, you won't plan for the optimum – you can't plan for the guy who's going to hire 50 people, and then six months later, he's only going to have 25 - that's his problem. If you plan for 25 and he has 50, that becomes your problem, because you don't have enough parking for all those people. You've got to plan for whatever the maximum is going to be, and if he's going to have that, then so be it."

Fagan: "That's how we did it with Wal-Mart and Home Depot, and that's why they picture 300 parking spots, gathering some ...."

Heard: "... Mr. Chairman, I just want to reiterate one point that I just brought up in passing at the last meeting, and just noting that one of the things that there's always discussion about at the Dare County Chamber of Commerce, is that there are ways to expand our economy beyond just solely tourist reliant or service reliant, and this is one way, at least potentially, a type of business that could operate and succeed here on the Outer Banks, because it doesn't have to have particular ties to anywhere. You can run it even if all of your customers are in California and they can be calling here.

"So, it is an opportunity we have, and one of the things that I just ask the Board to be conscious of as you're thinking about this is to consider that if this is a type of business that we want to promote or make it easier to establish, you want to keep that in mind, and that is why considering it to be a use of right rather than a conditional use is a very important step.

"If the call center we approved was a conditional use, they would not be here – it would have taken too long, and they would have not been here and found somewhere else to go. So that's just trying to think about what we can do to encourage this type of business if that is a goal or objective the Council and the Planning Board would like to have, as you are thinking about standards."

Pruitt posed if a work station could have 10 people, and the Attorney stressed it all depends on how a work station is defined. In response, Pruitt indicated he would prefer a definition to be established that would clarify that a work station means a place for one person to work, which would give the formula he would recommend for parking as one parking space per each work station, plus additional parking determined upon square footage of the building.

VC Garriss and Pruitt offered they interpret a work station as having one employee.

Chairman Northen gave the example of a call center being established at the shopping center where Wal-Mart and Harris Teeter is located, and using the Board's discussion of a parking standard of one parking space per work station plus "so many" per square foot of the building, he then asked, "Would the Town have to sit down and calculate all of that vast parking for that complex to throw this into that text to see if it complies?"

Heard: "Yes, we would, and we do. To be honest, on a lot of the centers, we try once a year to just go back and see who's come and gone, and sometimes when we have new uses,



we've, unfortunately, have had to turn down ... every year we turn down businesses wanting to go in certain centers because they're [the centers] are maxed out for parking. We hate doing it, but they've made decisions ... the owners have made decisions to allow businesses like converting a retail space to a restaurant - well, that might triple the parking requirement in some cases, and so we have to deal with that. It is something we already evaluate, so that wouldn't change something we're already doing."

Chairman: "On that same line, when Wal-Mart increased its square footage, did they have enough parking to comply with the increases?"

Heard: "Yes, sir. We had all those calculations in the staff report. It does."

Chairman: "I like what you're saying - if we could come up with one [parking] place per station plus so many spaces for square footage, I would think that's the way to go."

Pruitt and Chairman Northen discussed parking calculations and square footage of buildings, with both having agreement on two parking spaces per 1,000 sq. ft. being sufficient. Fagan reminded the Board of the Attorney's advisement -the Board needs to consider the optimum. Ending up with surplus parking spaces sometimes has to be done for the very nature of what is being discussed regarding call center requirements.

Using the Chairman's example, Planner Heard referenced the Walmart shopping center complex, where Cato had been located, noting it would be an excellent location for a call center. It would most likely lay out with one work station per 100 sq. ft. - 50 parking spaces; and, as to square footage, the 5,000 sq. ft. area would require an additional 10 parking spaces.

With the Chairman calling for a Board recommendation, Fagan noted he had suggested taking the words "conditional use" and "large" out of the text language, and a consensus was given in favor for said amendment. **Fagan then moved to amend the Kitty Hawk Town Code by the establishment of standards for "call centers," adding that the Planning Board finds this amendment to be consistent with the Town's adopted CAMA Land Use Plan.** Discussion began regarding specific language addressing the Board's discussion concerning parking standards.

Planner Heard interjected, asking to summarize the Board's comments and to make sure everyone is in agreement, particularly with the text amendment moving forward to Council:

"So, what I have - there would be three elements to this. One would be adding just 'call center' as a use of right in all the districts listed in the proposed text amendment. The second aspect would be defining 'work station' and being sure the definition includes a 'one person per work station' requirement as part of the definition. The rest of the definition would be some standard that we would pull from a dictionary. Then, the third aspect would be the actual adding the parking requirements, which would be one space per work station plus two spaces per 1,000 sq. ft. Does that sound like what everybody's voting on?"

A consensus was given by the Board members, and Chairman Northen called for the vote on the motion. **With the vote taken, the motion carried unanimously, 5-0.**

## 6. ZONING AMENDMENT (Preliminary Discussion):

a. **Shoreside Center Outparcels, 5336 - 5440 N. Croatan Highway.** Planner Heard reviewed with the Planning Board why this zoning amendment is being presented, particularly at this point

in the process. The potential zoning amendments deal with split-zoned properties at 5406, 5416, 5424, 5430 and 5440 N. Croatan Highway. This consideration is part of the efforts to present zoning clarification amendments, where staff is looking at areas in Town where zoning issues exist. The entire Shoreside Center is being examined. All property owners and business operators/owners have been contacted, with only one property owner questioning how the proposal would affect his property. The Planner explained he is seeking Board input on how to best address said property owner's valid concerns.

The staff memorandum dated October 17, 2013 is entered into this record of review:

<u>Property Address/Use</u>	<u>Parcel ID Number</u>	<u>Property Owner</u>
5406 N. Croatan Hwy Gateway Bank	986720806636	Billy & Millie Roughton (owner) Gateway Bank & Trust (lessee)
5416 N. Croatan Hwy BB&T Bank	986720804529	Shoreside OP 3, LLC (owner) BB&T Bank (lessee)
5424 N. Croatan Hwy Carawan Seafood	986720802553	Eckard Land Holding Co.
5430 N. Croatan Hwy Vacant	986720801438	Shoreside OP 2, LLC
5440 N. Croatan Hwy ABC Store	986720709413	Dare County ABC Board

#### Proposal

At this time, the Planning Board is being asked to review and consider the potential zoning for a series of split-zoned properties located in front of the Shoreside Center. Input is being sought on which of the two zoning districts (BC-1 or BC-3) may be most appropriate for these properties.

#### 5406, 5416, 5424 & 5430 N. Croatan Highway

**Current Zoning:** Beach Commercial (BC-1)/Community Shopping Center (BC-3)

**Proposed Zoning:** Beach Commercial (BC-1) OR Community Shopping Center (BC-3)

Each of these properties is presently split-zoned Beach Commercial (BC-1)/Community Shopping Center (BC-3). The Town is considering the rezoning of these parcels to clarify the zoning of the properties if/when development, redevelopment, or other zoning issues arise in the future.

#### 5440 N. Croatan Highway

**Current Zoning:** Beach Residential (BR-1)

**Proposed Zoning:** Beach Commercial (BC-1) OR Community Shopping Center (BC-3)

This property is presently zoned Beach Residential (BR-1). Any rezoning would also need to include an area on the adjoining property leased for use as part of the parking lot for the ABC store. The Town is considering the rezoning of this parcel to bring the current use of the property into compliance and clarify the zoning of the property if/when development, redevelopment, or other zoning issues arise in the future.

NOTE: These rezoning proposals are part of a larger effort by the Town of Kitty Hawk to clarify the zoning map by matching zoning district boundaries to existing property lines with the approval of the affected property owners. Initial contact has been made with all property owners and tenants of the subject properties.

#### Background Information

**5406 N. Croatan Highway:** This property is approximately 39,500 square feet (0.91 acre) in size and presently contains Gateway Bank (built in 2005-06). NOTE: the adjoining parcel to the east is considered part of this development, bringing the total size of the property to 51,100 square feet (1.17 acres). The property is presently split-zoned by a zoning line parallel to Croatan Highway that travels 100 feet in depth through a majority of the property, then turns east into Croatan Highway (shown on the attached zoning map). A majority (approximately 70%) of the property is zoned Community Shopping Center (BC-3). The remainder of the property is zoned Beach Commercial (BC-1). The property gains its sole access from an internal traffic circulation road for the Shoreside Center. When developed for the bank in 2005, it was noted that the property was split-zoned BC-1/BC-3. It appears that the site plan was reviewed

and approved under BC-3 district standards.

**5416 N. Croatan Highway:** This property is approximately 50,000 square feet (1.15 acres) in size and presently contains BB&T Bank (built in 2005-06). The property is presently split-zoned by a zoning line parallel to Croatan Highway that travels 100 feet in depth through the property (shown on the attached zoning map). 50% of the property is zoned Community Shopping Center (BC-3). The remainder of the property is zoned Beach Commercial (BC-1). The property can be accessed from an internal traffic circulation road for the Shoreside Center and a right-turn only access drive in and out of Croatan Highway. When developed for the bank in 2005, it was noted in the staff report that the property was zoned BC-1. It appears that the site plan was reviewed and approved under BC-1 district standards.

**5424 N. Croatan Highway:** This property is approximately 20,000 square feet (0.46 acre) in size and presently contains Carawan Seafood (built in 1948). The property is presently split-zoned by a zoning line parallel to Croatan Highway that travels 100 feet in depth through the property (shown on the attached zoning map). 50% of the property is zoned Community Shopping Center (BC-3). The remainder of the property is zoned Beach Commercial (BC-1). Developed decades before the surrounding Shoreside Center, Carawan Seafood doesn't comply with all of the Town's current development standards, but is considered a legal, nonconforming property (grandfathered). The property can only be accessed from Croatan Highway.

**5430 N. Croatan Highway:** This property is approximately 28,500 square feet (0.65 acre) in size and presently undeveloped. The property is presently split-zoned by a zoning line parallel to Croatan Highway that travels 100 feet in depth through a majority of the property, then turns east into Croatan Highway (shown on the attached zoning map). A majority (approximately 70%) of the property is zoned Community Shopping Center (BC-3). The remainder of the property is zoned Beach Commercial (BC-1).

**5440 N. Croatan Highway:** This property is approximately 22,000 square feet (0.51 acre) in size and presently contains a Dare County ABC store. As shown on the attached zoning map, the property is presently zoned beach Residential (BR-1). It appears that confusion over the zoning of this property occurred when Cypress Knee Trail was moved further to the east in 2005 to straighten out the road and help facilitate the development of this property. Documentation shows that the ABC store was subsequently developed under the assumption that the property was zoned Community Shopping Center (BC-3), when in fact, it appears that all or most of the property was actually zoned Beach Residential (BR-1).

The subject properties are surrounded on the east, south, and west sides by property belonging to the Shoreside Center, a shopping center containing Wal-Mart, Harris Teeter, and a number of additional commercial spaces. The Shoreside Center properties are zoned Community Shopping Center (BC-3). A portion of this development is also subject to a Planned Commercial Development (PCD) zoning district. The Kitty Hawk Estates neighborhood is located further to the west. Across Croatan Highway to the north is The Marketplace at Southern Shores shopping center, which is located in the Town of Southern Shores and zoned commercially.

### Staff Analysis

#### Zoning Districts:

**Beach Commercial (BC-1).** The BC-1 district allows a variety of residential, institutional, office, and commercial uses. The intent of the BC-1 district is to provide for the commercial needs of the neighborhood and immediate surrounding geographical area. The commercial development will be characterized by small to medium size land parcels with commercial development of low intensity. The BC-1 district is not intended to be developed for shopping centers, shopping malls, or big box retail/wholesale businesses. The attached section of the Zoning Ordinance outlines the permitted uses and development standards for the BC-1 district.

**Community Shopping Center (BC-3).** The BC-3 district allows a great variety of office and commercial uses on a single property. The stated intent of the BC-3 district is to provide for the proper grouping and development of commercial facilities and to provide a means for protecting the public from dangerous arrangement of vehicle and pedestrian ways within shopping malls and shopping centers. The attached section of the Zoning Ordinance outlines the permitted uses and development standards for the BC-3 district.

**Proposed Development:** There are no development proposals relating to the proposed rezoning. The intent of the rezoning is to clarify and improve the existing zoning on mostly developed properties.

### Land Use Plan

The Town's adopted land use plan is an important document to consider as it is intended to help guide the pattern and standards of development in the Town. While consistency with the plan is certainly desirable, it is important to note that approval of a rezoning request is not legally required to be consistent with the Town's adopted land use plan if Town Council decides that other factors justify the need for a zoning change.

The Town of Kitty Hawk's adopted CAMA Land Use Plan designates the eastern four of the subject properties as a **Commercial, Shopping, and Working Area** and provides the following description for this classification:

"Commercial, shopping, and working areas include areas that primarily encourage the concentration of commercial facilities in clusters or group developments and to provide readily accessible shopping facilities and will provide for the proper grouping and development of commercial facilities to serve permanent and seasonal residents and the general public."

However, at least a portion of the Dare County ABC store property is designated as "**Rights of Way, Easements, Canals, Ponds, Creeks, Etc.**" At the time the land use plan was developed, a portion of this property was within the right-of-way for Cypress Knee Trail.

### Planning Board Action

The Planning Board has been asked to provide some initial review and comments on these potential zoning amendments for the properties at 5406, 5416, 5424, 5430 and 5440 N. Croatan Highway. A formal recommendation is not being sought at this time, but will be brought back to the Board after further discussion with the affected property owners.

### Directions to the Subject Property

From Kitty Hawk Post Office, N. Croatan Highway & Kitty Hawk Road, drive approximately 2.8 miles north, then west on N. Croatan Highway (Hwy 158). The series of properties under consideration are located just past McDonald's in front of the Shoreside Center.

Provided to the Board was a BC-1 vs. BC-3 comparison citing the differences, as well as, pros and cons between the districts. Also, zoning and development background information pertaining to the Shoreside Center was also prepared for the Board's perusal. A copy of these documents have been attached to these minutes as **Attachment #1** and **Attachment #2**.

Planner Heard noted he was working under the general assumption the BC-3 district would be more flexible than the BC-1 as far as uses; however, it is not – because, over time, the Town's ordinance has evolved with specific uses. A review of **Attachment #1** was made, with the Planner summarizing that the basic principle for the Board to consider is the BC-1 district is more flexible for a property owner than a BC-3 zoning district, particularly when talking about outparcels.

The Planner next discussed **Attachment #2**. An aerial photo was used for reference.

Heard's comments continue: "There's a variety of site plans and things we have in our files. There's a real inconsistency as to where that zoning line is located, and I'll be honest with you, that if I had to give my opinion on this, I would say that the current zoning of that stretch there, as far as the split zoning, is very likely a mapping error. In other words, they just went back to a property line without realizing there was a new property line 100' behind it. Just because of the way that it is shown in the initial documents, it appears that it follows the lines of the properties as they were developed – 200', 100', 200'. So, that's my best guess at how this occurred for those four properties at the front there that now contain Gateway, BB&T, Carawan's and the other vacant parcel; however, that does not negate ... the point is, there's confusion as to where that line is, and it is important for the Town to set that line in an appropriate place so that those properties aren't in limbo in the future should they ever seek redevelopment, or even if one of those properties seeks to put an addition on the bank. What district do we review it under? What standards do we review it under? So, I think it is important, no matter how it came about, no matter what it is, it's important that we define that."



"Now, the one thing that's a little different ... that's dealing with the four in the center ... the one that's different is the property containing the ABC Store, and it's pretty clear from doing the research that there's a good portion ... maybe the county with their mapping that they did, that you've got in your staff report, doesn't show any of that property in the commercial zone. Even in a best case scenario, it was only ever partially zoned commercially. At least a majority of that lot has always been zoned residentially.

"Obviously, when that property was developed, back in 2005, at that time, the staff report prepared by the planner did reference it as being a commercial property. The property owner, the surrounding owners, the planning board, the town council, all of them, the information provided to all of them was that the property was commercial, so it was reviewed and developed as if it was. So I don't think there was any misrepresentation, as everyone was of the understanding it was commercial, but the fact of the matter is that that line, in order to truly be commercial, needs to be moved over to encompass the developed area of that property.

"I have spoken with the county manager and he has passed this along to the ABC Commission for Dare County and they are supportive of that, of course, to correct that, so there would be no issues moving forward in the future should anything ever be challenged or something like that. So, that is a little bit of a separate issue - it didn't come about in the same way as the others, but again, something we need to clarify in that instance."

Chairman Northen inquired if the Board decides to recommend a BC-3 zoning instead of BC-1 for the four lots, would it make the properties noncompliant with current standards? Planner Heard replied, "I think we might have one conforming ... I think BB&T might be conforming. Their lot is a little over an acre in size. The big one where they become nonconforming is the lot size, but I think all of the others would become nonconforming, particularly Carawan's. Carawan's is probably not even ... it just might be a dab over half an acre in size. So, that's one issue for the owners - is do we want to create a nonconforming situation that doesn't necessarily exist today?"

In response to the Chair asking about the zoning line being moved to have BC-1 cover from US 158 to the roadway in front of Walmart, the Planner explained, "I think if you're looking at this, where you probably want all of the frontage ... I guess, even McDonald's is a separate deal because it was developed under the BC-3, but all of the others you would probably want to take it all the way from the west of the entrance road and between the McDonald's and Gateway all the way over and including the ABC Store, presumably you would want to look at doing that."

Because of the lot sizes, VC Garriss offered, it seems the simplest solution is BC-1, to which the Chair concurred.

The Board inquired if a decision was needed this meeting, and Heard explained this matter is not time sensitive. Any suggestion given by the Board would first be offered to the property owners for their consideration and concurrence.

Fagan recalled that when the BC-3 was being designated, the zoning recommendation at that time was concerned with such a large property and development possibly becoming vacant. In that BC-1 allows for the flexible development of many different types of uses and could turn over quicker, Fagan said BC-1 zoning may serve the community better, especially because it runs along a main entranceway.

Pruitt concurred with the flexibility of BC-1 zoning, though he indicated being uncertain how it affects the tax base.



McClellan supported BC-1 zoning, as well as Richeson and Heath. The Chair gave a nod to the Planner that the Board unanimously recommends BC-1 zoning, with Planner Heard stating he would get in touch with the property owners and relay the Board's input and direction. The matter will return back to the Board's agenda after said contacts and responses have been made.

**7. COMMENTS:**

**a. Chairman Northen.** A question was posed by the Chair concerning the upcoming election, noting two Planning Board members have filed for a seat with the Town Council – VC Garriss and Jeff Pruitt. The Town Attorney stated these unopposed candidates will continue to serve on the Planning Board until they take office with the Town Council at the December 2013 meeting.

**b. Planning Board Members.** No other comments were made by the Board members.

**c. Town Attorney.** Nothing further was addressed by the Attorney.


**d. Planning Director.** Planner Heard noted Mayor Perry has been actively seeking candidates to fill the upcoming seats on the Planning Board, noting the alternate members will also be considered for the voting member positions. A few applications have been received.

**8. PUBLIC COMMENT**

There was no public input.

**9. ADJOURN**

With no other items, **the Chair declared the meeting adjourned at approximately 7:13 p.m.**

A handwritten signature in black ink, appearing to read "Oscar Northen", written over a horizontal line.

Oscar Northen, Chairman

Attachments: 2

Minutes Transcribed and Respectfully Submitted By: Betty Moore Williams

**Attachment #1**

**SHORESIDE CENTER OUTPARCELS**

**BC-1 VS. BC-3**

**DIFFERENCES/PROS & CONS**

**USES**

Both districts generally allow a wide variety of retail, office, and service uses.

BC-3 prohibits any type of residential use. BC-1 allows single-family residences with administrative review and second-story apartments over commercial uses with a conditional use permit.

Allowed in BC-3, not BC-1

- Department stores (use of right)
- Broadcasting facilities (CUP)
- Sports/recreational facilities, time share sales (PCD)
- Home improvement warehouses (PCD)

Allowed in BC-1, not BC-3

- Schools (use of right)
- Churches (CUP)
- Emergency heliport (CUP)
- Veterinary hospitals/clinics (CUP)
- Boat sales & rentals (CUP)
- Craft production & retail sales (CUP)
- Print shop (CUP)
- Miniature golf courses (PCD)
- Catering services (CUP)
- Game rooms (CUP)
- Natural grass putting golf courses (CUP)
- Bed & breakfast facilities (CUP)
- Clubhouses/proshops (CUP)
- Kayak sales, rentals & tours (CUP)
- Indoor skateboard ramps (CUP)
- Bicycle rental & repair (CUP)
- Fitness centers (CUP)
- Electric vehicle dealerships (CUP)
- Produce stands (CUP)

## Attachment #1 – Page 2

**DEVELOPMENT STANDARDS**

<b><u>Development Standard</u></b>	<b><u>BC-1 District</u></b>	<b><u>BC-3 District</u></b>
Minimum Lot Size	15,000 s.f. (0.34 acre)	43,560 s.f. (1 acre)
Minimum Front Setback	15 feet	35 feet
Minimum Side Setback	10 feet/0 feet if attached	15 feet/no common walls
Minimum Rear Setback	20 feet	15 feet
Maximum Lot Coverage	60%	60%
Maximum Building Height	35 feet	35 feet
Minimum Residential Buffer	50 feet	100 feet
Maximum Sign Size	48 s.f.	32 s.f.
Maximum Sign Height	14 feet	8 feet
Other	No other standards specific to this district	Has a variety of other standards applicable to the entire shopping center

**SUMMARY**

After reviewing the differences between the BC-1 and BC-3 zoning districts, it appears that the BC-1 district is generally more flexible. Although not intended for large-scale development, the BC-1 district actually permits a greater variety of uses on individual lots. The BC-1 district also has more flexible requirements for lot size, building setbacks, buffers, and sign size/height.

## Attachment #2

## SHORESIDE CENTER

## ZONING/DEVELOPMENT BACKGROUND INFORMATION

**Initial Development:**

The frontage along Croatan Highway was originally subdivided into a series of 36 lots, each with 50 feet of frontage on Croatan Highway and extending 100 feet deep off of the highway right-of-way.

- Nine (9) of these 50' x 100' lots were combined and an additional 100' feet of depth acquired for the development of a four (4) unit shopping center (Three Wink's).
- Two (2) adjoining 50' x 100' lots were combined for the development of Carawan Seafood.
- Five (5) of the 50' x 100' lots were combined and an additional 100' feet of depth acquired for the development of the Kitty Hawk Building Supply business.

**Initial Zoning:**

A survey dated October 15, 1987 shows Beach Commercial (BC-1) zoning along nearly the entire frontage of the Shoreside Center properties 500 feet in depth off of the Croatan Highway right-of-way. The property behind was a mixture of BR-1 and BR-3 zoning at that point in time.

**Recent Zoning:**

On July 2, 1990, Town Council adopted an ordinance creating the Community Shopping Mall/Shopping Center (BC-3) zoning district. A Kitty Hawk zoning map updated through August 20, 1990 shows the Shoreside Center properties zoned BC-3 and portions, but not all, of the previously developed outparcels zoned Beach Commercial (BC-1).

A final subdivision plat for the Shoreside Center properties dated September 13, 1991 shows all of the Shoreside Center properties (including the entrance drive, Cypress Knee Trail, and McDonald's property) zoned BC-3. This plat shows all of the previously developed outparcels as being zoned BC-1.

**Recent Development:**

- Wal-Mart and the rest of the Shoreside Center shopping center were constructed in 1992-93.
- McDonald's was constructed in 1994.
- The Three Wink's shopping center property (and two adjoining parcels to the east) was redeveloped for Gateway Bank and BB&T Bank in 2005.
- In 1997-98, the Kitty Hawk Building Supply store was burned and the lot cleared. The eastern portion of this property is presently a vacant outparcel. The remainder is now part of Cypress Knee Trail and a portion of the Dare County ABC store property.